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MALIN HALEY AND DIMAGGIO, PA			PIZIALI, ANDREW T	
1936 S ANDREWS AVENUE			ART UNIT	
FORT LAUDERDALE, FL 33316			PAPER NUMBER	

1771

DATE MAILED: 12/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

### **SUPPLEMENTAL EXAMINER'S ANSWER**

1. Responsive to the reply brief filed on 4/20/2006, and in response to the remand under 37 CFR 41.50(a)(1) filed on 9/27/2006, a supplemental Examiner's Answer is set forth below:

Regarding claim 1 being rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Morini et al. (US 5,476,911)

In response to appellant's assertion that Morini only teaches a "composition of matter" and that Morini fails to teach or suggest the currently claimed spunbond fabric product, the BPAI is directed to the Examiner's Answer filed on 2/23/2006 which cites portions of Morini (e.g. column 1, lines 5-21, column 3, lines 13-29, and the paragraph bridging columns 11 and 12) that clearly disclose the claimed invention. It is noted that appellant's brief and reply brief both fail to address the teachings of the paragraph bridging columns 11 and 12, wherein Morini clearly discloses that the composition of the invention can be formed into spunbond fabrics having superior tensile strength and softness.

The appellant asserts that the examiner failed to consider the claimed spinning rate step. The examiner respectfully disagrees. Firstly, the examiner cited the specific portion of Morini wherein it is disclosed that the fibers may be produced by a fast spinning process (column 3, lines 25-29). Secondly, the examiner contends that the claim is unpatentable even though the prior art product may be made by a different process. Although spinning rate can be used to influence filament properties such as diameter, the spinning rate does not necessarily result in filaments patentably distinct from filaments spun at a lower rate. It is noted that the appellant

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has failed to show, or attempt to show, that the claimed spinning rate step results in an unobvious difference between the claimed product and the prior art product.

Although not asserted in the brief, the reply brief asserts that due to the claimed filament speed, the filaments of the claimed spunbond fabric have fine diameters of 0.2 dpf. The examiner respectfully disagrees. Claim 1 does not claim filament diameter and the currently claimed filament speed does not inherently result in filaments with diameters of 0.2 dpf. A spunbond fabric is a nonwoven fabric formed by filaments that have been extruded, drawn, and then laid on a continuous belt. Therefore, the filament diameter is the result of many processing variables including extrusion hole size, amount of drawing, and spinning rate. Although the claims are interpreted in light of the specification, limitations (such as filament diameter) from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Regarding claim 3 being rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Bansal et al. (US 6,548,431).

In response to appellant's assertion that Bansal fails to teach or suggest filaments consisting of polyethylene terephthalate because Bansal simply discloses that the filaments contain at least 30% polyethylene terephthalate, the BPAI is directed to the Examiner's Answer filed on 2/23/2006 which cites the portions of the Bansal (e.g. column 12, lines 55-65) that clearly disclose that the filaments may consist of a single component. The examiner further cites Example 1 of Bansal wherein the extruded filaments consist of polyethylene terephthalate. It is noted that appellant's brief and reply brief both fail to address the teachings of Bansal that clearly disclose that the filaments can consist of a single component.

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Regarding claim 5 being rejected under 35 U.S.C. 103(a) as being unpatentable over Lu (US 5,688,468) in view of Ofosu et al. (US 6,268,302).

In response to appellant's assertion that the applied prior art fails to teach or suggest the claimed spunbond fabric because Ofosu allegedly limits the melt flow rate, the BPAI is directed to the Examiner's Answer filed on 2/23/2006 wherein the examiner explains that the melt flow rate is not claimed in claim 5. It is noted that appellant's brief and reply brief both fail to address the fact that the melt flow rate is not claimed in claim 5.

The appellant suggests that the claimed filament speed results in an unobvious difference between the claimed product and the prior art product. The examiner respectfully disagrees. Although spinning rate can be used to influence filament diameter, the spinning rate does not necessarily result in filaments patentably distinct from filaments spun at a lower rate. It is noted that the appellant has failed to show, or attempt to show, that the claimed spinning rate step results in an unobvious difference between the claimed product and the prior art product.

The applicant asserts that the viscosity values disclosed by Ofosu are lower than the claimed viscosity value. The examiner respectfully disagrees. Firstly, Ofosu discloses that the viscosity is at least  $2.5 \times 10^3$  dynes.sec/cm<sup>2</sup> (column 5, lines 38-51), therefore, Ofosu does not limit the upper value of the viscosity range. Secondly, even assuming *arguendo*, that the viscosity values disclosed by Ofosu are lower than the claimed viscosity value, Ofosu provides motivation to optimize the viscosity value because Ofosu discloses that polymer viscosity determines properties such as filament strength and softness and because it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

***In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).**

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Regarding claim 7 being rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Bailey et al. (WO 96/29460).

In response to appellant's assertion that the Bailey fails to teach or suggest the claimed melt flow rate (MFR) because the patent (USPN 5,173,356) cited within Bailey allegedly limits the MFR, the BPAI is directed to the Examiner's Answer filed on 2/23/2006 wherein the examiner explains that although the patent (USPN 5,173,356) cited within Bailey may limit the MFR, Bailey does not limit the MFR. The examiner also contended that the MFR disclosed by Bailey would increase at appellant's claimed higher temperature. It is noted that appellant's brief and reply brief both fail to address the fact that Bailey does not limit the MFR and the fact that the MFR disclosed by Bailey would increase at appellant's claimed higher temperature.

Regarding claim 8 being rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey et al. (WO 96/29460).

In response to the appellant reiterating the statements made regarding claim 7, the examiner reiterates the rebuttal made regarding claim 7.

2. Appellant may file another reply brief in compliance with 37 CFR 41.41 within two months of the date of mailing of this supplemental examiner's answer. Extensions of time under 37 CFR 1.136(a) are not applicable to this two month time period. See 37 CFR 41.43(b)-(c).

 11/30/06

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